

**61-1-2. Investment adviser -- Unlawful acts.**

(1) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise to:

- (a) employ any device, scheme, or artifice to defraud the other person;
- (b) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person; or
- (c) divide or otherwise split any consideration with any person not licensed under this chapter as an investment adviser or investment adviser representative.

(2) (a) Except as may be permitted by rule of the division, it is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing that:

(i) the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(ii) no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(iii) the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

(b) Subsection 61-1-2(2)(a)(i) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date.

(c) "Assignment," as used in Subsection 61-1-2(2)(a)(ii), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

(d) If the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(3) It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if:

- (a) the division by rule prohibits custody; or
- (b) in the absence of a rule, the investment adviser fails to notify the division that he has or may have custody.

(4) The division may by rule adopt exemptions from Subsections 61-1-2(2)(a)(i), (ii), and (iii) where such exemptions are consistent with the public interest and within the purposes fairly intended by the policy and provisions of this chapter.

Amended by Chapter 356, 2009 General Session